

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

SOVERAIN SOFTWARE LLC, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 6:07-CV-00511-LED  
 )  
 CDW CORPORATION, )  
 NEWEGG INC., )  
 REDCATS USA, INC. )  
 SYSTEMAX INC., )  
 ZAPPOS.COM, INC., )  
 REDCATS USA, L.P., )  
 THE SPORTSMAN'S GUIDE, INC., )  
 AND )  
 TIGERDIRECT, INC., )  
 )  
 Defendants. )

**JOINT MOTION TO CONTINUE THE TRIAL DATE**

Plaintiff Soverain Software LLC (“Soverain”) and Defendant Newegg Inc. (“Newegg”) hereby jointly move the Court to continue the trial date in this action from February 1, 2010 to April 26, 2010. The parties are in agreement as to the April 26, 2010 date. This motion is necessitated by witness unavailability during the trial schedule as set in the Court’s Order of January 26, 2010 (Docket No. 316).

1. The Court’s First Amended Docket Control Order (Docket No. 87) set jury selection for February 1, 2010 and jury trial “as reached” for February 8, 2010. The trial date was then discussed at last week’s pretrial conference, held on January 21, 2010. At that conference, the parties understood the Court to have reset trial for February 19, 2010, continuing

thereafter on non-consecutive dates.<sup>1</sup>

2. The Court further offered the possibility of an April 2010 trial. Following the January 21 pretrial conference, the parties were in communication with their witnesses and with each other regarding the trial date. The net of these discussions was that the April trial setting was preferred, specifically the week of April 26<sup>th</sup>.

3. Before the parties could formally report these discussions to the Court, on January 26<sup>th</sup> they received an Order (Docket No. 316) setting the trial as follows:

February 1 and 2 – jury selection and trial.

February 8 and 9 – trial continues.

February 16 and 17 – trial concludes.

4. Both parties have expert witness conflicts during this trial period.

5. Soverain's rebuttal expert on validity, Michael I. Shamos, is unavailable after February 12, 2010 (and through March 10<sup>th</sup>). (*See* Declaration of Michael I. Shamos, filed concurrently herewith.) As Dr. Shamos is a rebuttal witness, he is not expected to appear until late in the trial, during the trial setting currently set for February 16 and 17. Dr. Shamos, although available, cannot appear during the second setting as this will be the heart of defendant's case-in-chief, and thus will include the testimony which Dr. Shamos is going to rebut. There are also substantial evidentiary issues that will be addressed during Newegg's validity case (including issues surrounding the testimony of Alexander Trevor regarding CompuServe and Newegg's expert Edward Tittel), and that will effect the scope of Dr. Shamos' testimony, and therefore must be resolved before Dr. Shamos can testify.

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<sup>1</sup> Based on this understanding the parties released their respective hotel and office reservations, and do not currently have reserved space in Tyler for February 1.

6. Dr. Shamos is of one of Soverain's key witnesses, and Soverain's only technical expert on validity. If the current schedule is maintained, Dr. Shamos will be out of the country (in China) and unavailable to testify during the expected time period for Soverain's rebuttal case. It would be unfairly prejudicial to Soverain to require Soverain to try this case without its only technical expert witness on validity, Dr. Shamos. Soverain's technical expert on infringement, Dr. Grimes, cannot fill the gap. He has not prepared a report on validity and has not studied the prior art.

7. In addition, Newegg's only technical expert, on issues of both infringement and validity, Mr. Edward Tittel, is currently out of the country through February 5, 2010. While Mr. Tittel will not be testifying during that time, it is important to Newegg's preparation of the case that he be able to be present in the courtroom during Soverain's case-in-chief. If Mr. Tittel is unable to be present during Soverain's case, Newegg will be prejudiced in its preparation of its defense to Soverain's claims. Accordingly, the February 1 commencement of trial also results in a conflict for defendant Newegg.

8. The parties are in agreement to the proposed continuance of trial until April 2010. The parties are also in agreement that, if it fits the Court's schedule, jury selection be held at that time. Both parties have confirmed the availability of their witnesses for an April 26, 2010 trial date. In addition, an April 26, 2010 trial setting would also give the parties more time to prepare their cases and to discuss settlement. This additional time could, therefore, have a salutary effect on the case.

9. The parties request that this motion be granted and trial be continued until April 26, 2010. A proposed order granting this joint motion is provided herewith.

Dated: January 27, 2010

Respectfully submitted,

/s/ Kenneth R. Adamo

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**CERTIFICATE OF SERVICE**

This is to certify that on January 27, 2010, a true and correct copy of the foregoing document has been served on all counsel of record via the Court's ECF system.

/s/ Kenneth R. Adamo

Kenneth R. Adamo

Attorney for Plaintiff